

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

In the Matter of:

ATLANTIC STREET STATION
STAMFORD, CT 06901

Docket No. A2014-1

UNITED STATES POSTAL SERVICE ANSWERING BRIEF
(December 2, 2013)

On October 17, 2011, the Postal Regulatory Commission ("Commission") posted correspondence from Mr. Kaysay Abrha ("Petitioner") objecting to the alleged discontinuance of the Atlantic Street Station in Stamford, Connecticut.¹ The correspondence included an application for suspension, which requested the Commission to suspend the discontinuance and that the Postal Service reopen the Atlantic Street Station. Petition at 4. By means of Order No. 1855, dated October 23, 2013, the Commission docketed the letter, assigning PRC Docket No. A2014-1 as an appeal pursuant to 39 U.S.C. § 404(d). Order No. 1855 directed the Postal Service to file an Answer in response to the Petitioner's application for suspension, the Administrative Record, and any responsive pleadings by October 28, 2013. Also on October 23, the Commission docketed comments from the National Post Office Collaborate ("NPOC"), who also objected to the alleged discontinuance of the Atlantic Street Station.²

Pursuant to Order No. 1855, on October 28, 2013, the Postal Service filed an Answer in Opposition to Petitioner's Application for Suspension and Motion to Dismiss

¹ Petition for Review and Application for Suspension, October 17, 2013 ("Petition").

² Comments received from the NPOC, October 23, 2013 ("Comments").

Proceedings.³ In the Motion, the Postal Service argued that the Commission should dismiss the appeal as premature since operations at the Atlantic Street Station have been placed under an emergency suspension and the Postal Service has not determined to discontinue the facility. On November 8, 2013, the Public Representative filed a response in which she opposed the Postal Service's Motion to Dismiss.⁴ The Public Representative argued that the actions affecting the Atlantic Street Station are a "*de facto* closing." PR Response at 3. On November 15, the Commission posted Response of the Petitioner, which also opposed the Postal Service's Motion to Dismiss.⁵ The Petitioner incorporated the Public Representative's Response in its entirety.

On November 18, 2013, the Petitioner filed his initial brief in support of his appeal.⁶ Since the Petitioner's Brief incorporates responses filed by himself and the Public Representative, this Answer will address issues raised by both the Petitioner and the Public Representative. The Petition, NPOC Comments, responses and the Petitioner's Brief argue that the actions affecting the Atlantic Street Station amount to a discontinuance in violation of 39 U.S.C. § 404(d), and the Postal Service failed to comply with the notice requirements and failed to consider the statutory factors prior to discontinuing the Atlantic Street Station.

As outlined in the Postal Service's Motion to Dismiss and discussed below, operations at the Atlantic Street Station have been suspended and Postal Service has

³ United States Postal Service Motion to Dismiss Proceeding, October 28, 2013 ("Motion to Dismiss").

⁴ Response of the Public Representative in Opposition to United States Postal Service Motion to Dismiss, November 8, 2013 ("PR Response").

⁵ Response of Kaysay H. Abrha in Opposition to United States Postal Service Motion to Dismiss Proceedings, November 15, 2013 ("Petitioner Response").

⁶ Brief in Support of Petitioner's Appeal, November 19, 2013 ("Petitioner Brief").

not determined to discontinue the facility. Accordingly, the Commission should dismiss the appeal as premature.

ARGUMENT

I. ALLEGATIONS THAT THE POSTAL SERVICE HAS VIOLATED STATUTES OTHER THAN 39 U.S.C. § 404(D) SHOULD BE DISMISSED FOR LACK OF JURISDICTION.

The Petitioner and the NPOC both argue that the Postal Service violated provisions of the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA). Petition at 3-4; Comments at 2-5. These allegations are improperly brought before the Commission and should be dismissed. The Commission has held that “the Commission’s role in appeals under section 404(d)(5) does not include responsibility for enforcing the NHPA.” Order No. 1037, Order Affirming Determination, Docket No. A2011-49 *Village Station, Pinehurst, NC* (December 12, 2011) at 12; see also Order No. 1588, Order Dismissing Appeal, Docket No. A2013-1, *Santa Monica, CA* (December 19, 2012) at 5, footnote 9. Analogously, the Commission’s role in appeals under section 404(d)(5) does not include responsibility for enforcing the provisions of NEPA. Accordingly, the Commission should dismiss complaints alleging violations of NHPA and NEPA.

II. ALLEGATIONS THAT THE POSTAL SERVICE VIOLATED 39 U.S.C. § 404(D) SHOULD BE DISMISSED AS OPERATIONS AT THE ATLANTIC STREET STATION ARE SUSPENDED AND NO DETERMINATION TO DISCONTINUE THE FACILITY HAS BEEN MADE.

The Petitioner argues that emergency suspensions are meant to be used for “natural disasters, war or some third party occurrence.” Petitioner Response at 3. However, the Petitioner does not indicate where he derived this definition of an emergency suspension. The regulations offer guidance on what circumstances justify an emergency suspension; such situations include

cancellation of a lease or rental agreement when no suitable alternate quarters are available in the community, a fire or natural disaster, irreparable damage when no alternate quarters are available in the community, challenge to the sanctity of the mail, or *similar reasons*[.]

39 C.F.R. § 241.3(a)(5)(i)(B) (emphasis added). Handbook PO-101, Postal Service-Operated Retail Facilities Discontinuance Guide, (“Handbook PO-101”), mirrors the regulations and provides that similar situations justify an emergency suspension

Circumstances that may justify a suspension include, *but are not limited to*, the following:

- a. A natural disaster.
- b. Termination of a lease or rental agreement when suitable alternate quarters are not available in the community, especially when the termination is sudden or unexpected.
- c. Lack of qualified personnel to operate the office.
- d. Irreparable damage when no suitable alternate quarters are available in the community.
- e. Severe damage to, or destruction of, the office.
- f. Challenge to the sanctity of the mail.
- g. Lack of adequate measures to safeguard the office or its revenues.

Handbook PO-101, Section 61 (emphasis added). Here, Postal Service officials determined that severe conditions of the Atlantic Street Station posed potential health

and safety risks. This justification fits reasonably within the purposes of the regulations and within the management discretion of Postal Service officials.

The Petitioner argues that the Postal Service cited to an improper justification for the emergency suspension as “emergency suspension regulation[s] cannot apply if the emergency is cause[d] by OSHA or safety and welfare violations.” Petitioner Response at 3. Therefore, the Petitioner argues, the action cannot be an emergency suspension.

Id. The prohibition to which the Petitioner appears to reference provides that the Postal Service “may not consider compliance with any provision of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).” 39 U.S.C. § 404(d)(2)(B). However, this prohibition does not apply to the decision to suspend operations. Rather, as indicated in the previous subparagraph, it applies to when the Postal Service is determining whether or not to discontinue a Post Office. 39 U.S.C. § 404(d)(2)(A). No determination to discontinue the Atlantic Street Station has been made.

The Public Representative also argues that the suspension of operations is not a *bona fide* emergency suspension but rather amounts to an “indefinite suspension” or a *de facto* discontinuance. PR Response at 2-3. The Public Representative appears to base her recommendation upon an incomplete understanding of the facts. As stated in the Motion to Dismiss, the Postal Service negotiated a 30 month lease back agreement with Cappelli Enterprises. Motion to Dismiss at 3.

The Postal Service has the authority to manage its retail facilities in the provision of services to customers. 39 U.S.C. § 101(b). At times, the Postal Service is presented with circumstances where an emergency suspension of operations is warranted. It would be an inefficient use of Commission resources to adjudicate each and every

suspension before the Postal Service has an opportunity to assess the situation and determine a plan of action to address the circumstances necessitating the suspension.

III. ACTIONS REGARDING THE ATLANTIC STREET STATION ARE MOST ACCURATELY DESCRIBED AS AN EMERGENCY SUSPENSION OF OPERATIONS WHILE THE POSTAL SERVICE IS TAKING STEPS TO RELOCATE OPERATIONS FROM THE ATLANTIC STREET STATION.

The Petitioner argues that the “only logical explanation” for the Postal Service’s action affecting the Atlantic Street Station is that it is a discontinuance. Petitioner Brief at 2. This relates to his argument that there are only three stages of a retail facility’s life after it is commissioned and opened: relocation, suspension, and discontinuance.

Petitioner Response at 2. The Petitioner then argues that the action is not a relocation because the second customer letter distributed by the Postal Service appears to have “abandoned” this position. Petitioner Brief at 1. His argument appears to imply that if the Postal Service suspends operations, then it is no longer seeking to relocate.

Petitioner Response at 3.

The Postal Service provided no indication that it was abandoning its plans to relocate operations from the Atlantic Street Station and it has no intention to abandon such plans. The second customer letter does not mention the relocation of operations from the Atlantic Street Station because the emergency suspension of operations is a separate action from any decision to relocate operations or to the sale of the building. One may argue, like the Public Representative, that while the September 2013 safety inspection “may have hastened the move, it did so by only a few days.” *Id.* This again implies that once the Postal Service and Cappelli Enterprises closed on the sale of 421 Atlantic Street, the Postal Service would be required to vacate the premises. As

discussed in the Motion to Dismiss, however, the Postal Service negotiated a 30 month lease back agreement. Thus, closing on the sale agreement would have not required the Postal Service to vacate the building because a lease would be in place that permits the Postal Service to remain for another 30 months.

IV. THE SECOND CUSTOMER LETTER IS NOT AN ATTEMPT TO “RE-FRAME” POSTAL SERVICE ACTIONS, BUT RATHER AN ATTEMPT TO DISTRIBUTE ACCURATE INFORMATION TO CUSTOMERS.

The Public Representative also argues that by issuing a second Customer Letter, the Postal Service attempted to “re-frame” its actions. PR Response at 5. However, when considered in context of the Postal Service’s actions following the emergency suspension, it is clear that the October 18, 2013 Customer Letter is one of the many steps undertaken by the Postal Service management to clarify information previously distributed to Atlantic Street Station customers. As mentioned in the Motion to Dismiss, information provided in a posted notice and customer letter was incorrect. Thus, prior to any appellate action, the Postal Service acted to clarify any misunderstandings that may have resulted. First, on September 25, 2013, Postal Service officials removed the September 18 notice and posted notice clarifying that the Atlantic Street Station was suspended. Motion to Dismiss, Exhibit 2. Second, on October 11, 2013, Postal Service officials posted the text of the October 18, 2013 letter at the Atlantic Street Station. Motion to Dismiss at 3, footnote 3. Third, on October 18, 2013, the Postal Service distributed a second customer letter to all affected customers.

Conclusion

The Petitioner failed to allege facts that constitute a condition precedent to any jurisdiction of the Commission under section 404. 39 U.S.C. § 404(d)(5). Accordingly, the relief requested by the Petitioner is not, as a matter of law, available to the Petitioner and Commission should dismiss the appeal.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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